IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.847 OF 2000
FROM
CHAMBER SUMMONS NO.711 OF 2000
IN
EXECUTION APPLICATION NO.131 OF 2000
IN
ARBITRATION PETITION NO.15 OF 1999
AND
AWARD DATED 23.8.1999

Riddhi Siddhi Construction Co.,
having office address at
3, Kasam Khan Compound,
Rani Sati Marg, Malad
(East), Mumbai-400 097. .... Appellants

- Versus -

Doordarshan Employees' Co-op.
Housing Society Ltd., having
Registration No.BOM/W-P(Hsg.)
(TC) 5089/90-91, registered
Office at S.No.36, Hissa
No.3, C.T.S. No.158-B,
Dindoshi, Goregaon (East),
Mumbai-400 063. .... Respondents

Shri M.U. Pandey for the Appellants.

None for the Respondents.

CORAM: R.M.S. KHANDEPARKAR &
D.G. KARNIK, JJ.

DATED: JUNE 28, 2007

ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.):

1. Heard the learned Advocate for the appellants. None present for the respondents.

2. This appeal arises from the order dated 21-9-2000

passed in Chamber Summons No.711 of 2000 in Execution Application No.131 of 2000 in Arbitration Petition No.15 of 1999 in Award dated 23-8-1999. By the impugned order, the chamber summons taken out by the respondent-society has been allowed and the attachment of the Bank account of the respondents as well as building Nos.1, 2 and 3 is ordered to be lifted, while attachment of building No.4 is allowed to be continued.

3. On account of certain disputes having arisen between the appellants and the respondent-society in relation to constructions carried out by the appellants for the society, and the amount payable in that regard by the respondents, the arbitration proceedings were initiated and during the pendency of the arbitration proceedings, the parties arrived at settlement. Accordingly, it was agreed that:

> "1. Agreed that the Respondent do pay a sum of Rs.2,52,00,000/- (Rupees Two Crores Fifty Two Lacs Only) with interest thereon at 12% per annum from the date of the Consent Award till payment, in the manner following:
>
> (a) Rs.30,00,000/- (Rupees Thirty Lacs Only) on or before 19th September, 1999;

and

(b) Rs.2,22,00,000/- (Rupees Two Crores Twenty Two Lacs only) being the balance plus interest on or before 28th February, 2000.

After payment of the said sum of Rs.30,00,000/- as aforesaid, interest payable from the date of such payment or payment of any further amount or amounts shall be computed on the reduced figure after giving credit for the part payments made. AGREED that all the part payments shall be first appropriated towards principal amount.

2. AGREED AND DECLARED that save and except the settled claim for Rs.2,52,00,000/- and interest as provided by clause 1 hereof, the parties have no other claim outstanding against each other whatsoever."

Based on the Consent Terms, the award was passed by the arbitrator on 23-8-1999. In terms of the said award, an amount of Rs.2,52,00,000/- and interest as provided

under the award was to be paid by the respondents to the appellants. It is the case of the appellants that only an amount of Rs.70 lakhs was paid and the respondents failed to pay the balance amount.

4. Execution proceedings were taken out by the appellants. While building Nos.1, 2, 3 and 4 of the respondent-society, situated in the property being Survey No.36, Hissa No.3, C.T.S. No.158-B, Dindoshi, Goregaon (E), Mumbai-400 063 and Savings Bank Account No.603 at the Mumbai District Central Co-operative Bank Limited, Malad (W) Mumbai were attached under the Attachment Warrant dated 24-4-2000. The respondents thereafter in June, 2000 took out the Chamber Summons No.711 of 2000 praying as under:

> "(a) This Hon'ble Court be pleased to hold that only sum of Rs.1,12,26,000/- (Rupees One Crore Twelve Lakhs Twenty six thousand only) is payable by the Respondents to the Claimants under the Award dated 23.08.1999.
>
> (b) That the Hon'ble Court be pleased to extend the time for payment of balance dues payable under the award dated 23.08.1999 till 31.12.2000.

(c) That this Hon'ble Court be pleased to raise the attachment of the respondents property being S.No.36, Hissa No.3, C.T.S. No.158-B, Dindoshi, Goregaon (E), Mumbai-400 063 and Saving Bank Account No.603 at the Mumbai District Central Co-operative Bank Ltd., Malad (West), Mumbai, levied by warrants of attachment dated 24.04.2000 being Exhibit 'A' and 'B' respectively to the affidavit of Mr. A.C. Johny in support of Chamber summons."

5. After hearing the parties, the learned single Judge by the impugned order allowed the chamber summons and lifted the attachment of the building Nos.1, 2 and 3 as well as of the Savings Bank Account, as stated above. Hence, the present appeal.

6. The records clearly disclose that the award dated 23-8-1999 came to be declared based on Consent Terms arrived at between the parties. In terms of the said Consent Terms, the respondents agreed to pay a sum of Rs.2,52,00,000/- along with interest thereon. It is the case of the appellants that out of the said amount, only an amount of Rs.70 lakhs was paid and rest of the amount

was not paid. The records nowhere disclose any further amount having been paid to the appellants by the respondents in terms of the said award. The records also do not disclose that the said award was at any point of time set aside or modified by the Court. Therefore, the award had attained finality and the respondents were liable to pay a sum of Rs.2,52,00,000/- along with interest thereon. In case, the respondents wanted to challenge the said award, the respondents were free to take recourse to the procedure prescribed for the same. However, it was not permissible for the respondents to take out the chamber summons in execution proceedings and to invite the executing Court to sit in appeal over the said award. Perusal of the impugned order discloses that the learned single Judge under the guise of entertaining the chamber summons had virtually sat in appeal over the award and had held that there is a strong case for re-computation of the liabilities of the respondents. It is settled principle of law that once the disputes between the parties have been culminated in the final order based on the Consent Terms arrived at between the parties or on account of adjudication by the competent Court, such a final order cannot be sought to be interfered with in the execution proceedings as the executing Court cannot go beyond the decree or final order passed by the Competent Court. Being so, it was not open for the learned single Judge,

while entertaining the chamber summons in the execution proceedings, to order re-computation of liabilities of the respondents.

7. Perusal of the impugned order clearly discloses that the attachment of the buildings under reference has been lifted solely on the ground that there is a case for re-computation of liabilities. The said finding has been arrived at by entertaining contention on behalf of the respondents that the respondents were seeking to dispute the correctness of the total claim of Rs.2,52,00,000/-. Once the records disclose that the said figure was arrived by the consent of the parties and in that regard the award was declared by the arbitrator and same was not challenged in due course and had attained finality, it was not permissible for the executing Court to go beyond the said award.

8. As no other ground was disclosed for lifting the attachment, the impugned order cannot be sustained and is liable to be set aside. Accordingly, the appeal succeeds; the impugned order is set aside and the Chamber Summons No.711 of 2000 is hereby dismissed. The costs to be borne by the respondents.

(D.G.Karnik, J.) (R.M.S.Khandeparkar, J.)

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